

## AGENDA ITEM 11.

### PROPOSED RULES

**Submitted for:** Action

**Summary:** This item reports on the agency's proposed rules for the Americans with Disabilities Act Grievance Procedure, the text of which was published in the **Illinois Register** on September 24, 2004 and presented to the Commission at its September 24 meeting. Initial publication of the proposed amendments triggered a 45-day public comment period that ended on November 7, 2004.

One letter of public comment on the proposed rules was received from Equip for Equality, an advocacy group for people with disabilities. This letter expressed concern regarding two issues. First, the organization feels that ISAC should be more pro-active in informing individuals that a grievance procedure is available, rather than providing it upon being informed of an individual's desire to file a grievance. Staff feels that this is not practical, since we have no way of identifying either an individual with a grievance or an individual with a disability until that individual chooses to inform us. The grievance procedure will be available to all individuals, as are all ISAC rules, on ISAC's web site.

The second concern relates to the requirement to file a grievance in writing. Staff feels it is important to capture the individual's complaint in their own words, in writing, for the permanent record of any proceedings. Further, this concern is taken out of the context of the rules as a whole, which provide in another section that "upon request, assistance in completing the Grievance Form shall be provided by ISAC." Therefore, staff is not recommending any changes to the proposed rulemaking, and the rules presented for consideration today contain no substantive changes from those presented to the Commission at its September meeting. These proposed rules are entirely consistent with the rules already adopted by numerous other State agencies, including the Attorney General's office.

Following acceptance of the proposed rules by the Commission, the Executive Director may direct staff to submit the rules to the Joint Committee on Administrative Rules (JCAR), thus initiating the second 45-day review period.

**Action requested:** That the Commission approve the following resolution:

**“BE IT RESOLVED** that the Commission accepts the revised proposed rules for the Americans with Disabilities Act Grievance Procedure as modified thus far during the rulemaking process.”

ILLINOIS REGISTER

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ILLINOIS STUDENT ASSISTANCE COMMISSION

NOTICE OF PROPOSED RULES

TITLE 4: DISCRIMINATION PROCEDURES  
CHAPTER XLVI: ILLINOIS STUDENT ASSISTANCE COMMISSION

PART 1400  
AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURE

Section

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AUTHORITY: Implementing the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) and authorized by Section 20(g) of the Higher Education Student Assistance Act [110 ILCS 947/20(g)].

SOURCE: Adopted at 28 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 1400.10 Purposes**

- a) This grievance procedure is established pursuant to the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) (ADA) and specifically Section 35.107 of the Title II regulations, 28 CFR 35, requiring that a grievance procedure be established to resolve grievances asserted by qualified individuals with disabilities. Should any individual desire to review the ADA or its regulations to understand the rights, privileges and remedies afforded by it, please contact the Designated Coordinator.
- b) In general, the ADA requires that each program, service and activity offered by the Illinois Student Assistance Commission (ISAC), when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities.
- c) It is the intention of ISAC to foster open communication with all individuals requesting readily accessible programs, services and activities. ISAC encourages supervisors of programs, services and activities to respond to requests for modifications before they become grievances.

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**Section 1400.20 Definitions**

"Act" or "ADA" means the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.).

"Complainant" is an individual with a disability who files a Grievance Form provided by ISAC under this procedure.

"Designated Coordinator" is the person designated by ISAC to be responsible for the coordination of efforts of ISAC to comply with and carry out its responsibilities under Title II of the ADA, including investigation of grievances filed by complainants. The Designated Coordinator may be contacted at Office of the General Counsel, Illinois Student Assistance Commission, 1755 Lake Cook Road, Deerfield, IL 60015. (See 28 CFR 35.107.)

"Disabilities" shall have the same meaning as set forth in the Americans With Disabilities Act.

"Executive Director" means the Executive Director of ISAC.

"Grievance" is any complaint under the ADA that is reduced to writing by an individual with a disability who meets the essential eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by ISAC and believes he or she has been excluded from participation in, or denied the benefits of, any program, service or activity of ISAC or has been subject to discrimination by ISAC.

"Grievance Form" is prescribed for the purpose of filing a grievance under this Part and includes information such as name, address, phone number, nature of the grievance, with specificity, including date of incident, time, place and witnesses if applicable.

"ISAC" means the Illinois Student Assistance Commission.

"Qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by ISAC.

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**Section 1400.30 Procedure**

- a) Grievances must be submitted in accordance with procedures established in Sections 1400.40 and 1400.50 of this Part. It is mutually desirable and beneficial that grievances be satisfactorily resolved in a prompt manner. Time limits established in this procedure are in calendar days, unless otherwise stated, and may be extended by mutual agreement, in writing, by the complainant and the reviewer, at the Designated Coordinator and/or the Final Levels described in Section 1400.50.
- b) A complainant's failure to submit a grievance, or to submit or appeal it to the next level of procedure within the specified time limits, shall mean that the complainant has withdrawn the grievance or has accepted the last response from ISAC given in the grievance procedure.
- c) ISAC shall, upon being informed of individual's desire to file a formal grievance, instruct the individual how to receive a copy of this procedure and the Grievance Form.

**Section 1400.40 Designated Coordinator Level**

- a) If an individual desires to file a grievance, the individual shall promptly, but no later than 180 days after the alleged discrimination, submit the grievance to the Designated Coordinator in writing on the Grievance Form prescribed for that purpose. The Grievance Form must be completed in full in order to receive proper consideration by the Designated Coordinator.
- b) Upon request, assistance in completing the Grievance Form shall be provided by ISAC.
- c) The Designated Coordinator, or his/her representative, shall investigate the grievance and, if the grievance is found to be valid, shall make reasonable efforts to resolve it. The Designated Coordinator shall provide a written response to the complainant and Executive Director within 15 business days after receipt of the Grievance Form.

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**Section 1400.50 Final Level**

- a) If the grievance is not resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may submit a copy of the Grievance Form and Designated Coordinator's response to the Executive Director for final review. The complainant shall submit these documents to the Executive Director, together with a short written statement explaining the reasons for dissatisfaction with the Designated Coordinator's written response, within 15 business days after receipt by the complainant of the Designated Coordinator's response.
- b) Within 15 business days, the Executive Director shall appoint a three-member panel to review the grievance at the Final Level. One member shall be designated chairman. The panel shall schedule a review of the grievance, which shall commence no later than 15 business days after the last member of the panel is appointed.
- c) Complainant shall be afforded an opportunity to appear before the panel. Complainant shall have a right to appoint a representative to appear on his or her behalf. The panel shall review the Designated Coordinator's written response and may conduct interviews and seek advice as it deems appropriate.
- d) Upon agreement of at least two of the panel members, but not later than 15 business days after the review described in subsection (b), the panel shall make recommendations in writing to the Executive Director as to the proper resolution of the grievance. All recommendations shall include reasons for such recommendations and shall bear the signatures of the concurring panel members. A dissenting member of the panel may make a recommendation to the Executive Director in writing and shall sign the recommendation.
- e) Within 15 business days after receipt of recommendations from a panel, the Executive Director or designee shall approve, disapprove or modify the panel recommendations; shall render a decision on those recommendations in writing; shall state the basis for his or decision; and shall cause a copy of the decision to be served on the parties. The Executive Director's decision shall be final. If the Executive Director disapproves or modifies the panel's recommendations, the Executive Director may include written reasons for such disapproval or modification.
- f) The Grievance Form, the Designated Coordinator's response, the statement of the reasons for dissatisfaction, the recommendations of the panel, and the decision of the

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Executive Director shall be maintained in accordance with the State Records Act [5 ILCS 160] or as otherwise required by law.

**Section 1400.60 Accessibility**

ISAC shall ensure that all stages of the grievance procedure are readily accessible to and usable by individuals with disabilities.

**Section 1400.70 Case-By-Case Resolution**

Each grievance involves a unique set of factors that includes but is not limited to: the specific nature of the disability; the essential eligibility requirements, the benefits to be derived, and the nature of the service, program or activity at issue; the health and safety of others; and whether an accommodation would constitute a fundamental alteration to the program, service or activity or undue hardship on ISAC. Accordingly, termination of a grievance at any level, whether through the granting of relief or otherwise, shall not constitute a precedent on which any other complainants should rely.